

COUNTY OF KAUAI
Minutes of Charter Commission Meeting – May 17, 2006

Board/Committee:	CHARTER COMMISSION (CC)	Meeting Date	May 17, 2006		
Location	Mo'ikeha Meeting Room 2 A & B	Time	4:40 pm	Adjourned	7:35 pm
Present	Mr. Louis Abrams, Chair, Ms. Barbara Robeson, Vice Chair, Members: Mr. Mike Belles, Mr. Ramon de la Peña, Mr. Galen Nakamura, Mr. Glen Takenouchi and members of the Public				
Guests	Jay Furfaro, Council Member, County of Kauai				
Excused	Ms. Linda Moriarty				

SUBJECT	DISCUSSION	ACTION
1. Call To Order	Mr. Abrams, Chair called the meeting to order at 4:40 pm.	
	<p>Walter Lewis, public witness, handed the Commission members material on which he intends to speak on today, so they can review them as he goes along. His comments are, it has been wisely said that the major purpose of a Constitution is to protect citizens from their government. The Kauai County Charter is our Constitution. In his prior testimony before the Commission, he has offered them some measures for their consideration would in various ways seek to protect our citizens from certain acts of our officials and to afford citizens the opportunity to act to improve the quality of their governments. He asked to review this citizen's rights measures that he has presented. The right of citizens to determine how they wish to be governed is a fundamental concept of bureaucracy. The Kauai Charter expresses this right of citizens to seek through petition for 4 types of governmental action. One, amendment of the Charter, two, adoption of Ordinance by initiative or their repeal by referendum, three, the recall of elected officials and four, impeachment of officers. Each of these provisions is currently flawed. In his earlier testimony he noted that the number of citizens signatures required for the petitions for adoption of Ordinances and recall which is now 20% of registered voters, is unreasonably high and effectively precludes any use of these measures. He suggested that the requirements be reduced to the 5% of the registered voters standard which applies to the Charter amendments. Earlier he also pointed out that Section 22.02 of the Charter which contains subject matter of limitations sharply and unnecessarily limited the instances where petitions for Ordinances could be used. These limitations curtail the availability of initiatives and referendum on many of the topics where they would be needed. He's proposed the Section be repealed. Article XXVII of the Charter relating to recall has never been used. In part this is because it requires an undue number of citizen signatures and in part because only persons elected for 4 year terms can be recalled. In his view there is no reason to give immunity to any elected official and he would encourage eliminating the 4 year requirement. Article 23.13 provides for impeachment of officers of the County. He would hope that they would never need to seek impeachment of any County official. But if that ever should be necessary, appropriate provisions should be in place. At present, impeachment can be sought in 2 ways; the Board of Ethics can after a complaint hearing from one person and the vote of 3 of its members, file in the Circuit Court a complaint and proceeding relating to the Code of Ethics. Before 1992, impeachment could also be initiated in cases of malfeasance, misfeasance or nonfeasance by petitions with</p>	

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	<p>signatures of a 100 registered voters filed in the Court. In that year, the measure was narrowly adopted increasing the signature number to 5% of registered voters. The petitions must be verified, meaning that the terms of the charges must be personally known to the signer. It would be rare indeed if specific matters are ever personally known to 2,000 of our residents. He would propose a better procedure. Impeachment requires that the court must sustain the charges so the official has the reasonable opportunity to defend himself. The Board of Ethics has the power to initiate impeachment proceedings as to violations of the Code of Ethics. He would clarify the Charter so that the Board of Ethics is also empowered to hear charges of impeachment for malfeasance, misfeasance and nonfeasance, and would reduce the number of signatures to the earlier amount of 100, but require that citizen's petitions be filed with the Board of Ethics, which would then proceed to determine whether they wish to determine them as findings of the Board and pass them to the Court. As a last item regarding citizen's petitions, the provisions in the various Charter articles as to the content of the petition are inconsistent and in some cases, onerous. He would suggest standard terms for petition content and a restriction on Ordinances from burdening this process.</p> <p>In a different area, he also offered a proposal the County should adopt the limitation of these mount of expenditures also called TELs, allowed annually on operating expenses. In the past 5 years County operating budget have risen to \$123 million, an average increase of well over 10% per year. There is a serious citizen concern that expenses are not being adequately controlled. Many jurisdictions have adopted measures which impose limits beyond the basic requirement that budgets be balanced. He has presented a proposed limit that is based on the principle that increases in spending should be limited to population and cost of living increases, recognizing that salary costs are the major element of County expenses and that wages of employees under collective bargaining agreements are not under County control. His proposal would allow increases measured by the terms of collective bargaining agreements. Expense limitations and TELs usually also contain an exception from their restriction in cases of emergency. It would be prudent for our County to have similar relief. He would propose that not more frequently than once in a 4 year period if the County Council after a public hearing, found that there were emergency circumstances that justified a greater amount of expenditure that allowed under the limitation than a reasonable relaxation of the requirement for that year would be made.</p> <p>Finally he has raised by communication to the Commission his concern about certain provisions in the Charter relating to the Ethics Board. These provisions were spotlighted in the recent proceedings relating to the Police Commissioners. Section 20.02 E. of the Code of Ethics provides no officer or employee of the County shall use his official position to secure a special benefit, privilege or exemption for himself or others. This provision was applied to the process of selection of a person to serve as a Police Chief. He doesn't know if this language should be used in cases of selection of candidates for public office. Our Mayor makes regular appointments which could be construed using his official position to secure a benefit for the appointed party. His last concern is that 20.05 F. of the Charter states that all Board of Ethics hearings and complaints shall be closed to the public. As these hearings can result in criminal penalties, this is inconsistent with the rights of a criminal defendant to a public trial and a departure from the principles of the State Sunshine Law. It may also be compatible with Section 23.08 of the Charter, which specifies that meetings of all Boards & Commissions shall be open to the public. He would suggest that the provision be amended so that the Board of Ethics hearings be open to the public unless the person charged elects otherwise.</p>	

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	<p>Finally he would note that in the Charter a conviction of a felony shall forfeit the office of a Councilmember, but no such requirement exists as to the Mayor or other County officers. He would be pleased to provide to the Commissioners his suggestions for the text of amendments to carry out the points that he has made and he would be happy to answer any questions they may have.</p> <p>Mr. Abrams knows they have some of these that Mr. Lewis has proposed, they actually moved off the list, he thinks the recall for 2 year terms, the 100 signatures for impeachment, and the Board of Ethics being allowed to hear allegations of impeachable offenses. He said that those are off but he does believe that 23, 24, 25 are still on and they have to do with the percentages relative to initiative and referendum, recall and 25 had to do with the material requirements. He knows Mr. Lewis had talked some about duties of the Mayor and Council and it wasn't addressed here. Mr. Lewis said that it was a matter that he raised and he hoped that it will be considered by the Commission. Mr. Abrams said that they will take that one off right now because he would like to hear his input on that later, sometime down the line.</p> <p>Ms. Robeson thinks that some of these were on the list for Special Counsel to either research or talk to them about. She anticipates it will be talked about at some future date.</p> <p>Mr. Abrams said relative to the procedural requirements at the Board of Ethics, that Mr. Lewis is suggesting, he asked if there are some instances where right now the Board of Ethics could not consider something that was outside of the scope of the Code of Ethics. Mr. Lewis thinks the Charter is ambiguous on that and he would construe the empowerment of the Board of Ethics to commence impeachment proceedings to be limited to matters relating to the Code of Ethics, they can look at the provisions and make a decision for themselves, in any case, he said it should be clarified. He continued that the inference from the Charter is that the matters which could be presented to a court for impeachment would relate to matters covered by the Code of Ethics.</p> <p>Mr. Abrams tried to recollect their discussion last time and they had discussed 5%, they wanted to keep them all standardized, and what Mr. Lewis is pointing out is that in 1992 when the Charter amendment changed it from 100 votes to 5% of voters. Mr. Lewis is concerned about the 5% because he thinks that as a practical matter, that would foreclose the use of petitions to seek impeachment, the reasons he mentioned being that they are required to be verified petitions which imposes a higher standard on the signer than is the case elsewhere, plus the fact that if they were to follow his suggestion, it would be petitions which would be presented to the Board of Ethics which provide a filter between the signatures and the submissions of the signatures to the court. He said that as matters now stand, if the necessary signatures are obtained, they are automatically submitted to the court. His suggestion is if they were submitted to the Board of Ethics and the Board of Ethics had the authority to consider them, then it would be the Board of Ethics that would submit the charges to the court.</p> <p>Mr. Abrams asked relative to that, Mr. Lewis was suggesting the Board of Ethics hearings, instead of the default being closed, would prefer that it be open unless they would request that it be closed. Mr. Lewis thinks whether the hearing is open or closed ought to be determined by the person charged, and if the person</p>	

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	<p>charged wants to have an open hearing, then he thinks that should be the case. If the person charged is agreeable to a closed hearing, then so be it, but it shouldn't be, he thinks, left to the discretion of the Ethics Board, it should be left to the determination by the person who's the target for the investigation. Mr. Lewis reverted very briefly again to the matter on impeachment. He finds there's no reason to have in the Charter something that will never be used. It just doesn't make any sense to include it and he says to them he can't foresee that if there were a need for impeachment that the proceedings which are now in place could ever be effectively used because the standards he thinks are too high to achieve the result of having the matter submitted to the court.</p> <p>Mr. Abrams said that relative to Mr. Lewis' input on the TELs, which is amendment 21, they've got his information, they've got a lot of work to do on that and they will ask him back when they get to that subject matter. Mr. Lewis said that he gave a suggestion as to what might be an emergency clause, he thinks that it's important that there be an emergency clause in case there comes the time when the County has an urgent need for additional funding for justifiable reasons. He continued that the language he used is that which he found appearing in several of the TEL legislation, but by no means is the only way that it can be expressed, he would urge them if they would want to consider the concept of a TEL and emergencies, that they should consider the alternatives that might be available to what kind of relief would occur in the event that emergency condition exists. Mr. Abrams said in connection with that he was reading about Washington and their TEL and he noticed that they had a general fund, a violence reduction and drug education awareness fund, they had a health services account, they had a number of different accounts that were sort of there available for funding that was part of the budget, he asked if Mr. Lewis was saying it could be constructed any which way. Mr. Lewis thinks if there is good latitude for deciding what ought to be done, he recommended particular provisions but he is certainly not wedded to the provisions he recommended. He thinks it is important that there be a concept that in case of an emergency, relief could be provided to the limitation</p> <p>Ms. Robeson asked if they said today what TELs were, for the record. Mr. Lewis said that the word stands for Total Expenditure Limitations (TEL).</p>	
<p>2. Information concerning Kauai County Finances from Mike Tresler, Finance Director, Department of Finance, County of Kauai, as such Information may Pertain to a Charter Amendment Imposing a Total Expenditure Limitation upon the County of Kauai. Such Information</p>	<ul style="list-style-type: none"> a. Amount of Kauai County's operating budget for each of the prior five (5) years ending June 30, 2006 b. Percentage annual hourly wage increase in the collective bargaining agreement covering the most County employees within the County of Kauai for each of the prior five (5) years ending June 30, 2006 c. Percentage annual increase in the Honolulu Consumer Price Index for each of the prior five (5) years ending June 30, 2006 d. Most current information about increases in Kauai County's population for the prior five (5) years ending June 30, 2006 <p>Mr. Abrams reported that Mr. Tresler has informed them that he could not be there today and he will be there at the end of the month, on May 31st.</p>	

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includes, but is not limited to, the following items:		
3. Report from Mel Nishihara, Parks Administrator, Parks Division, Department of Public Works, County of Kaua'i, Regarding a Proposed Charter Amendment to Create a New Kaua'i County Department of Parks	Mr. Abrams reported Mr. Nishihara has a conference and can attend the May 31 st meeting.	
4. Testimony by Jay Furfaro, Council Member, County of Kaua'i regarding a Proposal to Amend the Kaua'i County Charter. The suggested Charter Amendment proposes to change the Name, Responsibility, and Authority of the Kaua'i County Cost Control Commission to the Revenue & Cost Control Commission, with necessary changes to the Commission's Authority	<p>Mr. Abrams noted that in the additional handouts, the Commissioners have the actual resolution, and this was what originated it, it came to them on March 7th of last year, so it has some of the details on that. Mr. Abrams thanked Mr. Furfaro for taking the time to address this.</p> <p>Mr. Furfaro wanted to be able to express for the benefit of clarity in government spending this combined Revenue and Cost Control Commission and the re-definition. They have from him a suggested ballot narrative composed to about 4 short statements, but they also have and he believes the Chairman referenced the April 14th piece where he introduced the idea of a Revenue Council to the Council at hand. He continued that also as it relates to perhaps the dialogue that just came before them, talking about emergency expenditures and so forth, he gives them an idea of that they should be aware of in this concept of funding money through a bill that there is a well documented audited to fund emergency money as there is in the current process. For example the Council passed a emergency bill for \$950,000 to respond to the emergencies during the heavy days of rain, now how that is introduced in a way of a bill, if it is something that is reimbursable later from emergency funds from the State, from the Federal government, it will actually come back to them the following year on the reimbursements and it will require to identify that money reimbursed to them for the emergency and reconciled by which agency felt at the local level responded to an emergency and was documented and qualified for the reimbursement. So they have a procedure like that at present. He would also like to point out that each year in May, they get a summary of revenues for the County in the budget process and this particular piece identifies revenue potentials that first identify what comes from the tax base of the County, secondly what they get from the transit accommodation tax, and a lot of people don't realize that this County gets about \$11.8 million or almost 10% of the budget comes from TAT taxes. He said that other incomes come from enterprise funds such as golf and so forth, and really what he is proposing as that they review expenses, they take 2 times a year to have this committee review potential revenues because there is several things that happen in a particular year that are not accountable for right at present and end up being part of next year's surplus. What he wanted to point out to them is they should have a handout with a little graph and it ties to a summary of building permits that are issued and the values of the building permits. He said that in the year for the year we are adding value to the County's tax base and you can determine how much you're adding to the County tax</p>	

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	<p>base based on the value of the permits being issued and then taking that and simply calculating it against an index of what the current year's tax base would be and you could see in the little worksheet that he's got, there is in this period for 6 months, the potential of another half a million dollars that has been generated based on the impact of the building permits that are being issued in the year for the year. He said that simply just becomes part of the surplus at the end. He thinks for the transparency for the public to understand what is happening to our revenues, he's suggesting that the current Cost Commission do this as well, look at potential revenues, the pace of those revenues compared to budget, and it's no different than the State of Hawai'i that has a Council on Revenues where a couple times during the year the State takes a snapshot of all the potential revenues, this is not always in a case that there's a surplus of money, but they certainly have the opportunity to look at if there is going to be troubled times, they can react quicker to containing cost. The other piece he would suggest strongly, the biggest single expenditure in the County, is in fact payroll, that this Commission would look, they've got a little summary sheet and they can see that typically in the last year he's traced the County expenditures, they probably typically run about 8% under what they have forecasted from the previous years. This is mostly related to positions for a period unfilled and so forth, but at the end, could contribute to a decision or recommendation to use some special consultant services with this money left over. Or for example in the case of the Police Department, they budget for all the straight time positions, because those positions are not filled, they are generating a large amount of overtime, this Council would be able to see that there are funds that are unencumbered for straight time payroll but could be used for overtime payroll. So he thinks it brings a better understanding for a short report twice a year to the citizens by having a Revenue and Cost Control Commission, versus perhaps putting caps on emergency funding or operating caps because if you look at simple things including wages, benefits and utility usage, water, there's no real way that you can do anything other than trying to manage it the best you can. But you are not being true to the issues of letting Department Heads respond accordingly if you have to use that consumption, you can't let a budget scare you, you've just got to be able to come in and say, we understood what happened here, we've reconciled the cost, and in some cases approved through a money bill or an emergency bill the monies to do that. He sees this Revenue Council being able to work well with the Finance Department but giving the citizens an opportunity to really see the clarity in the expense cycle as well as the revenue cycle, so really this is about expanding the Cost Control Commission to also look at revenue opportunities. He thinks it's worthy of being on the Charter for the public to look at versus attempting to put in all these kinds of controls and then you might actually end up hampering their ability to give the appropriate service at the appropriate time to the citizens that deserve it. He thinks this gives a lot of clarity. That's his testimony, he's open for any questions, his main purpose was to give the Commission a couple of examples where if these reports about payroll, the 12 different revenue areas were presented to this Commission, they could have a much more transparent understanding of what's happening with the day to day operating budget.</p> <p>Ms. Robeson asked that he is saying that perhaps a Revenue and Cost Control Commission might possibly be in conflict with this Total Expenditure Limitation concept. Mr. Furfaro answered yes. Ms. Robeson said they did have some in their communications today, they had some correspondence from someone that said regarding the Cost Control Commission, that they thought it should be eliminated. She read "we worked hard, but it proved to be toothless tiger, a friend who chaired the Cost Control years ago is of the same opinion, no matter how dedicated and talented the group of volunteers are not in a position to understand the inner</p>	

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	<p>workings of County organizations well enough to make constructive recommendations except in very broad terms.” She thinks the Cost Control Commission hasn’t even been formed and so she’s wondering about these statements from that individual, is it worthwhile or not? Mr. Furfaro thinks in the effort to really come to a point, as they can see, he is only suggesting that this group get together with Finance Department, possibly in the month of May and December, to really look at the broader picture for the County. He knows there’s a lot of volunteers on the Board that they particularly look at bulk purchasing items and those particular things where he’s asking this Cost Control and Revenue Commission to really look at the tax base, are we collecting what we said we would, look at the payroll, are controlling the payroll and living within the budget lines, if not, why not, how are we consuming energy and what is our practice about controlling energy which is a serious item for us in the near future. He said those are the types of things he’s kind of saying it’s an opportunity to take a look at what’s there, do a report to the citizens, acknowledge that certain items have large variances and for what reason, so it’s more of a reporting rather than trying to implement controls, it’s more of a reporting to the citizens about is the budget a real budget, are we living within it and/or are we collecting revenues that we need to spend. Ms. Robeson asked that rather than an ongoing Commission, it seems like that’s the way that the Charter intends it now to be an ongoing Commission that’s always exploring and analyzing but the way she’s hearing him say it is it’s more like they meet on a certain topic and advise and it’s usually budget time or something like that, so it’s kind a different concept than what’s in the Charter now. Mr. Furfaro said yes, he thinks his verbiage talks about meeting again with the Finance people twice a year, he knows earlier somebody was talking about impeachment process and quite frankly if someone fails in public service, the 2 year term, by the time they resolved all of that they could probably un-elect the person. He said this is saying in a 2 year cycle the County is required to give a revenue report, they’re required to have a report from the auditors on the operating expenses and this Cost Control and Revenue Commission would be part of that dialogue and understanding and they could come out with their own findings or at least communicate some large variances that concern them as a group, so yes it’s perhaps the Cost Control portion of it references the old or the current system but he’s trying to talk about expenditures and revenue and Board of 7 people that really work closely with the Finance Director, and like he said the State has a Revenue Council. Ms. Robeson asked if he knows if that Revenue Council is an ongoing thing or is it configured the way that he mentioned. Mr. Furfaro said he believes the State Revenue Council meets only twice a year as well, he’s not absolutely certain, so he will refrain from confirming that, he knows they meet at least once a year and reviewing the taxes and revenues coming in from excise tax, they don’t have property tax, but other kinds of transportation fees from the airport and so on. It’s really interesting to have for example, a lot of people do not realize that the 2% cap on property taxes that the Council has implemented actually has reduced the potential revenue for the County in the last 2 years by \$12 million dollars. The first year it reduced the potential by 8 and in this budget session it’s reducing the potential and what he means by the potential, if they didn’t have the cap on the property tax, the assessment and rates could have made it even higher. There was \$12 million dollars of property relief over the last 2 years because of that. He saw a piece today that came through from the State Senate asking the Counties to take the lead on reducing certain types of taxes on the affordable home bracket. We already have a similar place like that, we put in the 3% cap that your property tax qualified would never exceed more than 3% of your income and here’s a resolution coming from the State Senate looking at that. It would behoove a Council of Revenues to also have an opportunity to understand how deep these potential revenue decreases are based on their real issues for our citizens, and he thinks an independent Revenue Council could do great</p>	

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	<p>justification confirming the improvements being made or not being made.</p> <p>Ms. Robeson asked in terms of what's in the Charter now, Article XXVIII, it seems like one thing that might be what he's thinking is to abolish that section and re-write it as a Council and would this resolution that was introduced, would that reflect today's current thinking on what that language would be. Mr. Furfaro thinks that would need to be revised and therefore he made a much more briefer summary that needed to be expanded in the event and again, this was very specific in the sense that this group would meet twice a year, at the end of the year in December, and again in May just before the County went through their budget session to confirm revenues and review last year's expenses. Ms. Robeson said what he just said addressed a lot of the issues they have heard about the Cost Control Commission, so she thanked him for coming in and clearing both pieces.</p> <p>Mr. Belles commented that part of the frustration they've witnessed in some of the testimony they've seen based on people personally appearing before them as well as written testimony that there's a perception, he doesn't know if it's real or just a perception, that the current Cost Control Commission is dysfunctional for a lot of reasons that have absolutely nothing to do with people who are willing to give selflessly of their time to serve on the Commission. Some of the concerns the Commission expressed, the thinking about it is that if they've got a dysfunctional Commission right now, dysfunctional for a lot of different reasons and adding additional responsibilities, there's a great likelihood it would be more dysfunctional than it is right now. That's why he likes Mr. Furfaro's suggestion of perhaps streamlining this process and maybe having something more likened to a blue ribbon panel that the County Council together with the Administration could work on and report on an as needed basis rather than having people just occupy space, using up County resources, meeting, giving reports that nobody seems to pay attention to that is to the satisfaction of the Cost Control Commission. He asked if that would be a possibility. Mr. Furfaro thinks that's a real possibility and he appreciates Mr. Belles labeling it a blue ribbon committee, that kind of makes this evaluation of how we're doing, check on ourselves mid-year and look at some of the bigger items, there's some very big items out there, for example the employee retirement system is growing and people need to understand that. Our County is now a \$134 million dollar corporation, somewhere along the line we need to do some self-audits on ourselves and understand what is happening and report back to the Council and work closely with the Finance Director. He thinks in all intents and purposes that Commissioners also and should have been given another part, a little broader briefing on what's expected of them. We don't necessarily want to know about repetitive purchases and so forth, yes they need to look at the procurement process, but they need to understand some of the larger cost and how we're doing, this County is growing, we're adding positions, are they validated, do we need Park Planners, all of those things and evaluate it from an outside group. For us to maintain life quality in a growing community, we're going to have to be identifying more staff, containing utility costs, managing resources and making sure that our expenses overall are in line with what they said they would be. He sees it more of a revenue, expense and self-audit twice a year.</p> <p>Mr. Belles commented that this Commission often times likes to proceed by not having to decide things and not having to propose Charter amendments when they know that there's another mechanism available. It seemed that 7 members of the Council signed off on this resolution and it seems that they've got unanimity in terms of</p>	

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	<p>feeling that it would help this revenue analysis for the County Council, knowing that the County Council under our Charter controls the budgetary process, is there a possibility the County Council could work together with the County Administration and currently with the present Charter, come up with this process and have it as regular as they need it and identify, as Mr. Furfaro just pointed out, the specific issues that they want to have information on and not necessarily complete nuts to bolts report that may only use 5-10% of that report. Mr. Belles asked if that is a possible resolution to this rather than going with this proposal which may make a bad system worse. Mr. Furfaro thinks Mr. Belles is absolutely correct on that possibility, that could happen that way. He thinks asking to be on the agenda right now was also to point out that some of the real big ticket items we have, we have an opportunity to make improvements to review these so that the citizens can see the clarity in trying to do the best possible job you can for the best possible price, and at the same time being sensitive to other costs of government. Mr. Furfaro said they have support at the Council for this, he doesn't think coming out with all these other expense caps and controlling what an emergency fund is and so forth, we have mechanisms there now that allow us, like the example he gave on the emergency fund for the North Shore, that it becomes well documented when we get reimbursed and then it goes right back into the budget. He can work within the framework of his colleagues and attempt to do this again.</p> <p>Mr. Belles asked if the interim before they make a final decision on this particular issue, because this item is still ripe and still pending, they haven't finally resolved this. If Mr. Furfaro and his colleagues could discuss amongst themselves and possibly pursue it with the Administration and see if there's a way that they can take care of business without having the Charter in there, they would much prefer that. But if he reports back to them that they clearly need some legal authority then they may want to explore something other than what he proposed which had the best of intentions at the time he proposed it, but maybe it just may not work for all the reasons that they witnessed and maybe come up with something more likened to his 4 or 5 bullet proposal and have something streamlined that gives him more flexibility in terms of County Council to do its job more effectively and get the expertise he needs in this community, and we have a lot of expertise. Mr. Furfaro appreciates that, and again whether they bring an item to the Charter Commission and it actually becomes a Charter item versus just sharing good information, so they can make reasonable decisions about what's in place right now and how we can better improve on it, he thinks it's a win-win situation. Mr. Belles replied that's where they want to help him, this is a forum to allow him to help solve the problem without having them to ultimately solve it, and saved them a lot of grief and allowed them to concentrate on other things. But if he reports back to them that this is still important and there's a better way of doing it, they would like to look at that option as well.</p> <p>Mr. Nakamura followed up on Mr. Belles' comment, he thinks another possibility is an Ordinance, and there have been Boards & Commissions in the County that are created by Ordinance and it's good because if it's an Ordinance it does have the force and effect of law. It has also the benefit in the sense that's it not quite as unwieldy as a Charter amendment in terms of having the flexibility to change should the Council at the time, decide they need to fine tune or hone the responsibilities or functions of it. Mr. Nakamura said that's another possibility and may be worthy of consideration. Mr. Furfaro thanked Mr. Nakamura for that comment. He would also like to point out that as we look at these things, it's important for people to have good information about, for example they put the 2% cap on for the taxes, but the reality in several areas of the island, we were</p>	

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	<p>not as current in the assessment, so it was a double edged sword with trying to manage those things, and that's why if they put this back together at the Council and in an Ordinance, we can probably get better results.</p> <p>Mr. Abrams asked about the emergency funding that they just appropriated, \$950,000, he asked where that came from. Mr. Furfaro said there was estimated by the Finance Department, about a \$2.7 million dollar surplus as they arrived to the end of year, and that's typical because as they can see from the actual reports he gave were somewhat down in payroll than we budgeted where someone up in areas of taxation based on last year's building permits, we have tax revenues that were not identified, so budget starts building by carrying over a surplus. At the time that they did the emergency bill it was estimated that the surplus would be about \$2.8 million dollars for the County of Kaua'i. So the \$950,000, through a bill, came out of that surplus and so really what they've done is started this budget process with only a \$1.8 million surplus because that money was what was left. What he wanted to point out was somewhere after the 61st day in the reconciliation they will send out reimbursables to the State and the Federal government, and that money will come back for what qualifies, that will become part of next year's surplus or spend other money bills in the year for the year.</p> <p>Mr. Abrams said they have gotten the Mayor's submittal where they show an unappropriated surplus of about \$9.2 million, actually \$11.8 million, but that was for the end of last year that's certified now. He is trying to reconcile. Mr. Furfaro said he is talking about this March. Mr. Abrams said they've been following this fiscal year's budget and they are about right on, this simply just takes from last year and puts it into next year's fiscal budget. He asked if there is a line item where they would be able to track that, it's not a department expense, it's just an emergency expense, he asked how does that show up on this year's books. Mr. Furfaro said it shows up through a money bill that asks for the money first then they estimated there would be \$950,000 short term need to respond with equipment, gas, extra Police and so forth. So these expenditures when they're documented, if it's for more Patrol Officers on the North Shore and so forth, that portion will show up in the Police Department. If there's equipment rental, that piece will show up in Public Works, and that's how it kind of reconciled back to the amount.</p> <p>Mr. Abrams asked about the resolution, he noticed in the first part Mr. Furfaro proposed to go ahead and reduce the number of members on this Commission from 7 to 5 and then have that split appointing. Mr. Furfaro said 2, 2 and have the 4 appoint 1. Mr. Abrams said that's been troublesome for them, it hasn't happened in the past, he's just concerned that it would happen in the future if that was the thing because they also have an amendment that goes back to the old way, which is Mayor appoints and Council approves, just so that they can make sure that they don't run into that problem, he asked what are Mr. Furfaro's thoughts on that. Mr. Furfaro said with any good organization, you try to surround yourself with people that have good ideas, you try to surround yourself with people that have good ideas to help lead. He thinks when you split Commissions and you understand the purpose and goals, you just have that many more people that could submit names, if you're looking perhaps at just Mayoral appointments, the reality is you might have a very qualified person that is there, their name may not be thrown in the hat, so he kind of takes it from a personnel recruitment standpoint, if you want as many possible people as you can, you bring to the table as many possible good candidates as you possibly can to select from, and therefore if half of the pot is from the Administration and half of the pot is from the Council, he might end up submitting 5 names and they could be submitting 5 names but</p>	

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	<p>the cream of those that want to serve, the people that are dedicated to public service and volunteerism will be looked at from a broader pool, that would be his answer.</p> <p>Ms. Robeson thinks in that general provisions section, it talks about the term of Commissions, and they had that question about their own Commission that it's 3 years and so if it wasn't like in the current Charter as a Cost Control Commission but if it was by Ordinance, some other kind of group, a Council or a blue ribbon or something then the selection or the appointment could be done in a different way because it wouldn't be a Commission as per the current Charter. Mr. Abrams said they're not proposing to do it by Ordinance. Mr. Furfaro is saying that he'll take this back to his colleagues based on the feedback that he has gotten from the Commission, as they can see he presented to them early on and he's more than glad to do that. He thinks just having this forum right now brings a lot of great ideas to the surface.</p> <p>Mr. Belles said what they may also want to consider as a quick fix and an immediate fix right now is that as they know as part of their annual budgets, they do frequently attach conditions and things that do require the Administration to cooperate with the Council and they may be able to accomplish that same objective of this resolution by means of a statement in the annual budget which require establishment of this panel, whatever they want to call it and they can establish the criteria for the selection as well as the charge for that particular Commission, and it may be more effective than a Charter amendment. Mr. Furfaro said again the whole point here is constantly looking for ways to make improvements so they do a better job for the citizens and letting them have an opportunity to really see some transparency in revenues and expenses. Mr. Belles said it was a great idea to save money and make government work more effectively and they don't question the objective, it's just how do they identify the proper vehicle to getting there.</p> <p>Mr. Abrams said that Mr. Furfaro is proposing that the Commission have no 2 term limit, that it's based on their efficiency, he's not sure what that would be, so he doesn't know if there should be a definition of efficiency so that they could be evaluated by. Mr. Furfaro said it's about these 2 terms but basically based on efficiency which is in return this Commission or blue ribbon panel being able to show some financial results for the County because they're introducing new ideas and so forth, that was the intent in that portion. Mr. Abrams said that Mr. Furfaro was talking about the meeting may be a limited time during the year, he's not sure how they could go about doing their business, particularly on the cost side because it requires a great deal of review, like what they are learning and lots of times being thrown into that, only a couple times a year may be problematic for them. He said they might think about them being ongoing, they may meet every couple months or so, but he knows it would be tough for them to do that cost-wise, revenue he can see where they can sit down and take a look at it but that would be one of his suggestions. Mr. Abrams asked if he was saying that at this time presently they are not able to get some of the information out of the Administration relative to doing their duty as a Councilmember, like advanced reports, knowing what kind of revenue, he asked if that is not directed to the Director of Finance, he asked how does that work. Mr. Furfaro doesn't mean to be disrespectful, but he took that a little farther than he should have, they can get good information from the Administration, but he wants to share with them also the 2 spreadsheets the Commissioners have, he did himself, he knows where to find the information, they get a monthly report but they don't meet to evaluate the monthly financial, but they get a report. He went to, he doesn't know how many operating departments there and he actually pinned down</p>	

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	<p>their actual payroll as reported in that report. He then summarized them in the total payroll for the County. So what he's saying is when they meet, if those pieces are put together in advance for them, payroll, employee retirement, utilities, they can see a summary sheet and they can just be looking at how we're doing, and if we're not doing so well and then ask the question, what's causing the variance. Are we overstaffing too many people in straight time and consuming too much overtime – but that might be an unfair response to him because as a manager of a rather large operating department, he's done this most his life but you can find the information, it's being provided, you just need somebody to have kind of an umbrella overlook and make some recommendations.</p> <p>Mr. de la Peña commented that he goes along with Commissioner Belles' suggestion that the Council should look at this among themselves, he feels that the Council members have more clout than Commissioners, so if they need information from Finance Department or Administration, they should be able to get it faster and better than Commissioners. Mr. Furfaro concurs with that, he would rather use the term that they have more influence on managing the pieces rather than clout, but it does require some moment just to kind of take a snapshot where we're at in the County in the year and have some serious dialogue about it and he will take his recommendation and hopefully they could have the appropriate influence. Mr. de la Peña said the reason why he uses clout is because they are the ones who approved the annual budget. Mr. Furfaro said that's true, they do control the purse strings, but it's worth convincing Department Heads in areas where they need to do better, at the same time recognize the challenges that they have in the day to day operations.</p> <p>Mr. Belles wants to make one thing clear, whatever comments they've had is clearly not intended to be critical, Mr. Furfaro should be commended for taking the initiative to put something like this on the table that provokes this type of debate and discussion and hopefully at the end of the day come up with a resolution that again, best serves what it is he is trying to get, but ultimately best serves the community because it's a better budget for everyone. Mr. Belles congratulated him on that, but said for Mr. Furfaro to not take what they are saying in a frustrating way. Mr. Furfaro said that he didn't and in the spirit of open discussion, he's been watching the Commission as they have been going through this, a number of Charter amendments out there and yet there's so many tools that we have, we just need to use more effectively and that was his point, but all the feedback is taken in good spirit.</p> <p>Mr. Abrams thinks the creativity of the Commissions is what Mr. Furfaro is asking them because they may look at it completely differently than a Finance Director and come up with other types of things that may stimulate some more discussion. Ms. Robeson said that as they are talking about this, it is sounding to her, something that she is more familiar with is a Board of Directors of a corporation, the finance committee they are going to look at the report that the ED gives them or the CEO or whoever gives them the finances, and they look at it at certain times and they make recommendations or do whatever they need to do. Mr. Furfaro would say that is a very good comparison, there is a group that looks at our investment portfolio, that already exists, he's not saying that they go that far, just take a look at halfway through the year, where are we, what are we doing right, what are we doing wrong, what can we improve on, those types of things.</p> <p>Mr. Nakamura said another thought was he doesn't know what kind of resources or staffing the State Council</p>	

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	<p>on Revenue has but that may be something to think about in terms of the creation of something like this, just to make sure that they have the adequate resources and information to do their jobs, it seems like a fairly complicated job to him. Mr. Furfaro said he appreciates those comments but he thinks when it comes to the Tax Office, we have tax people there that can help prepare the report, again it's about collecting, the basic resources are there and meeting with the Finance Director and the Deputy Finance Director just to check on where they are at he thinks gives a lot more value to the people that serve on this Commission, they see the big picture.</p> <p>Mr. Abrams was thinking about the Revenue Council on the State level, he asked Mr. Furfaro that he has these estimates given by the Commission would be considered by the Mayor and Council. He asked if they should not consider the fact that maybe those estimates should be what they should work with, why would they differ than what the State does, doesn't the Governor have to work or the Legislature have to work with the revenue estimates and that's basically how they build their balanced budget around it. Mr. Furfaro thinks Ms. Robeson's comments about kind of a Board of Directors is probably a most appropriate thing, for example if they saw that revenues were higher than expected there's a number of recommendations that could be made, for example the County of Kauai is borrowing \$39 million, a bond, well if we have a surplus in revenue, we could take that money to pay down the bond, that's one way to do it but that really has to be conveyed from a group to the Administration. When you pay down the bond, then the operating cash flow, you've got less money going out because your bond has shrunk, we have a surplus that could be identified for particular projects which strategies put in place, like the war on drugs. The flip side is if your revenues aren't up to that standard, then rather than borrow money you find yourself having an understanding of which services might we have to go without, those kinds of more global type of issues for Kauai. Mr. Abrams noted that they were grappling with the Salary one who expressed their dissatisfaction about not having their recommendations as what should be acted on and they are entertaining an amendment that has to do with that, and he was just thinking relative to the work product that Commission does, he would say it would be kind of frustrating if they went to all that work and made the recommendation and there better be a good reason why it was not followed, otherwise he's not sure whether they are going to get people who would want to serve, those are just his thoughts. Mr. Furfaro would say that remember Commissions make recommendations, he believes this time around the recommendations were acted upon, there were some that really showed the difficulty in recruiting Engineers, someone in head of public safety and so forth, and perhaps they didn't get as much attention as they should, but he's glad it's a form in front of them, it's getting more attention because clearly they want to be able to recruit the best possible people they can to serve the County of Kauai. He concurs that salary grades are a great part of that.</p> <p>Mr. Belles asked Mr. Furfaro if they come up with a resolution that really does work for both the County Council as well as the Administration, if he could report back to them because if it's something that is a moot point they'd like to move on to other things, but if he reports back to them that they would still like them to do this, they will consider that as well.</p>	<p>Mr. Jay Furfaro will report back to the Charter Commission to see if there is another mechanism of addressing the revenue analysis for the County Council.</p>
5. Discussion by Kauai County Charter	a. Additional amendments to the Kauai County Charter proposed by members of the public at the Charter Commission's three community informational meetings described above, which proposed amendments are	

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<p>Commission Regarding its Three Island wide Community Informational Meetings held on April 3, 2006 at Kilauea, April 12, 2006 at Hanapēpē, and April 24, 2006 at Kapaa</p>	<p>attached and incorporated by reference into this agenda.</p> <p>Mr. Abrams said that they are still getting in letters trickling in, which they'll see on number 6 where there are suggestions for Charter amendments and they have another list for them.</p> <p>This will go off the agenda but they will be going out to the communities later on and will put it back on.</p>	
<p>6. Discussion, Deliberation, and Action by Kaua'i County Charter Commission Regarding "Proposed Charter Commission Amendments", which is also Attached and Incorporated by Reference into this Agenda</p>	<p>Ms. Robeson said that the Commissioners had in their packet several handouts, one was called possible Charter amendments, and that had 3 sections – policy items, Special Counsel for research by Special Counsel, and Special Counsel for discussion for Special Counsel. And then they had another handout that was possible Charter amendments that did not move forward at the 5-3 meeting. What she did was consolidate that on to one thing so now they're working from this pink page. Then the second thing she did was, this was from last meeting, Louie had asked them to refer back to their December 12 meeting that they had with Kem Lowry and that when they had the facilitated meeting, that list of priority items that they came up with to make sure that what they talked about in that meeting that they covered that was either moving forward or not moving forward but they didn't want to drop anything or have anything fall through the cracks, so she went through that and she just wants to highlight what she thinks is covered and what is not covered.</p> <p>She started with Council districting, she thinks they've covered that issue in 1, 2, 3, and 4. The next one that says general provisions, that one is covered in 12 through 15 of their amendments. The next one is Parks & Recreation, there's a couple of different items there so Parks & Recreation is amendment number 19. This name change on Director of Public Works, they haven't covered that yet. They could take action or they could refer it to the Council depending on how they wanted to go. The next block on the table is taxing, spending and budgeting, and that's covered under amendment 21 and 16, somewhat. The bullet spending control and Councilmember Furfaro, that's 16. TELs, they've got that under 21. Real Property they've decided to delete that from the list. The next one, initiative and recall, that's covered under 23 and 24. The next one is create an Office, they said Office, but she really thinks they meant Department of Community Assistance, they haven't dealt with that one yet so she marked that as pending. Employee contracts, they haven't dealt with that so she marked that as pending. The next one, recommendation from Salary Commission, that's covered under 11 and then they combined 41 through 46 on that, so that's covered. Police Commission had to do with the numbers and that's covered under their Commission package 12 through 15. The next page is elected County Attorney that was amendment 27. Boards & Commissions is number 13. Department of Public Works is number 20. Appointment of Department Heads is pending, they didn't really deal with that one. Annual budget process, she has pending with a question mark. Transparency of government, the first bullet they really haven't dealt with, but bullet number 2, someone to assist Commissions, that's their number 12 which is the Commissions Administrator. PEG, the public education government, bring into County control, that's a new number 49 that they are going to be talking about today. Planning Commission, the next one, that's pending. Ethics is pending. Commissions is amendments number 12 through 15. Article VII the Mayor that's pending.</p>	

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	<p>Prosecuting Attorney pending. Department of Water pending. Personnel Services pending. Elections pending. Finance Department, she doesn't know what that was about so she has a question mark on that one. So they actually have quite a few pending ones from their 12/12 meeting and she asked the Chair where he wants to go on that.</p> <p>Mr. Abrams asked if anyone has questions or needs clarification. Mr. Belles thanked Ms. Robeson for all of the effort in reconciling all of this, as it is not easy, it makes their job a lot easier. He does not have a problem not going back in time and revisiting it, he thinks they considered a lot of these issues directly or indirectly and make a conscious or unconscious decision with the list they have today to pursue those items which doesn't mean that they're foreclosing anything from coming back in the future but he doesn't know that they need to go back item by item and find out did they discuss this or didn't they, the truth is if anybody wants, feels compelled to put any of these items back on the front burner, they have that ability to do it. Ms. Robeson thinks the idea if she is not mistaken was that they wanted to trigger their memory to make sure they consciously don't deal with something and if they wanted to, they bring it forward again. Mr. Belles said he appreciated it, because it is a good tickler, it does keep them aware of the whole spectrum, but again, it does help but looking at the list that they have right now he doesn't feel they really neglected anything that is critical or is compelling. Ms. Robeson said the only thing that she could suggest that they might want to use this for at some point in the future is there might be some things on here that they want to refer to Council, either for an Ordinance or for future Charter amendment, but they can discuss that later. Mr. Belles said actually as a recommendation, they may want to put this together with the new manual and have this be a continuing working document that they work together on and work off of and then this will ultimately be the basis of a final report where they come up with recommendations and various ways of handling any issues that they feel are outstanding. Ms. Robeson said that any pending item she'll add to the pink list. Mr. Abrams asked what was the white one, she was basically saying December 12. Ms. Robeson was working off December 12 and responding to them line item by line item, you can incorporate as she just said the pending matters into this pink sheet right now and transfer it from this so they have a single document to reflect everything dating all the back with December 12. Mr. Abrams said that Edie has been attaching their initial list of 3/20, 4/24, 5/3, so he asked shall they now at this stage use the pink sheet and as the attachment to the agenda so that they can not have to have all those other ones and they were doing that mainly so that the public could follow how they were moving through it by comparing the two but this would give them everything they would need to know. Mr. Belles thinks if they kept the original list on that, it would just add confusion because people are not necessarily going to be tracking all of their meetings and all their deliberations, they're not going to know why a particular item is no longer there and what the discussion was leading up to it so he thinks this is a more accurate reflection of where they are today and give the people a better idea what now to track and respond to as they lead up to their next series of public meetings. Mr. Nakamura said that if this list should become honed down in the future, he would probably suggest using updated discussions so the public as Mr. Belles said can track what they are focusing on. Ms. Robeson said that they change the date every time they update it and items that move to the amendments that did not move forward they might move them from one category to the items that did not move forward, so it will be clear. Mr. Abrams thinks what they should do is put the date that they actually had the meeting so someone could then go back to the minutes if they wanted to see the reason why. Ms. Robeson said that would be the date at the top, the meeting. Mr. Abrams said no because they may have ones at the next meeting or this</p>	

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	<p>meeting that could go off the list, so they would need to identify each particular one as it moves in to it, unless she wants to make a heading, all of these went off at this time. Ms. Robeson said no, and asked after for example, under amendments that have not moved forward, on number 5 she'll put after it the date, which was 5/3. Mr. Takenouchi asked for clarification, under annual budget process, would either 21 or 16 be a part of that, she had labeled that as pending, but he was wondering whether that was part of 21 or part of 16. Ms. Robeson said that she had a question mark, she kind of doesn't think so. Mr. Nakamura added that he thinks that was his proposal but he doesn't think so it was. Mr. Belles said as a reminder, if anyone feels that something has been neglected or overlooked and want to have it put the pink list, they can raise that at any time and they will consider it as a group. Mr. Abrams said the only other thing he was thinking is maybe they need to for the public to separate those that are still on list, like how they have possible amendments that come after the ones that are off. Ms. Robeson thinks they need to talk about that today, items 48 through 52, those came from the minutes of their last meeting, and they haven't talked about them as a body yet in terms of should they move up to, what other category should they be in, so that's the next step on this agenda item number 6. Mr. Abrams said that maybe they ought to have a section because he would suspect that the public will be suggesting amendments right up to the last moment, that they are pending suggestions, these are on the list, these went off the list and then they would try and dispense with them as they go through as they come in. Ms. Robeson thinks on 48 through 52 they need to take action and move them to either: policy items, Commission action or discussion, or items that did not move forward. Mr. Nakamura doesn't know if these items were on the agenda. Mr. Belles said that's a good point, since it really hasn't been called out in the agenda, it might be inappropriate to discuss it and they can have it on the next agenda. Mr. Abrams said what they will do also is anything that continues to come in, they will keep putting them on the list and that would be attached to it, maybe this should be a whole separate sheet of ones that are coming in that aren't on the official. Ms. Robeson said no, all on the pink sheet, but she'll just continue the numbering. She will add when to she gets to their communications for the day, she'll add those to this list.</p>	
RECESS	Mr. Abrams called the meeting into recess at 6:02 p.m.	
RECONVENE	Mr. Abrams called the meeting back to order at 6:09 p.m.	
6. Discussion, Deliberation, and Action by Kaua'i County Charter Commission Regarding "Proposed Charter Commission Amendments", which is also Attached and Incorporated by Reference into this Agenda <i>(continued)</i>	<p>Mr. Nakamura wanted to throw an item on the table for the Commissioner's consideration. He said in as much as the Commission has been meeting for at least a year, year and a half, and as much as, he's not sure if it makes for them to be accepting amendments on say hypothetically the day they have to make a final cutoff to decide on what amendments that will appear on the Charter. It may be appropriate for them to consider establishing a deadline for amendments to consider. Mr. Abrams asked if he would have a recommendation. Mr. Nakamura suggested in a month or so. Mr. Belles said that it has to be a reasonable period of time to put people on notice. Mr. Nakamura said that was what he was thinking, so that's open for discussion. Mr. Belles suggested 30 days from now. Ms. Robeson said there is a June 19th meeting. Mr. Belles said that would be good, that is 32 days. Mr. Abrams said that they will go ahead and advertise a cutoff date of June 19th. Mr. Abrams said that anything received after June 19th would not be received, but they would receive it for the purposes of giving it to the next Commission. Mr. Nakamura added or possibly forwarding it to the Council. Mr. Belles said that if a brilliant recommendation comes on the 33rd day, he asked if they want to have a mechanism where a super majority can agree to have that item put on the pink list. The Commissions agreed.</p> <p>Mr. Belles suggested that since this is going to be their first time to try and have Mr. Shiramizu here to help</p>	Mr. Abrams will advertise the cut off date of June 19 for possible Charter proposals or amendments.

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	<p>them and trying to judiciously use the time and money that's been generously appropriated for them, they should try and use and abuse as much as possible and get him in here while they can. He suggested that they start going through that list of the legal issues. Ms. Robeson thinks that's a good idea because they have a meeting on Monday that was specifically scheduled to deal with policy. Mr. Abrams said that would be on the second page where Special Counsel to research. They will give him some of their thoughts as to what they are looking for. Mr. Belles added to ask him if they were all self-explanatory or did they need help with some of their statements, if there were questions.</p> <p>Mr. Abrams read number 3, must a candidate be a resident of the district. Mr. Belles said first he thinks the frame of why they felt it was important to have Mr. Shiramizu at all of the meetings now as long as possible was that they wanted to make sure that they weren't running afoul and running amuck in their deliberation, they wanted him to be the restraint on them and if he sees that what they are proposing has Constitutional or other legal constraints, they want to know about it sooner rather than later so it won't become a train wreck, not that they won't do it anyway, but help them as much as they can and the issue as an example, must the candidate be a resident of the district, is it something they can just arbitrarily create these limitations or are there some legal limitations they should be aware of in the context of a district or a residency requirement, that's where they need help. Mr. Abrams asked what is a resident, do they have to be there for a couple of years, a year, so that when they define that they know exactly what they are talking about. Ms. Robeson said that elections has some kind of. Mr. Abrams said yes, in particular he thinks they were talking about the possibility of having them be in that district for some time prior to running for the office. Mr. Belles said that as Mr. Shiramizu knows, there are different definitions of resident, residency and different State, Federal and County law, so let's come up with the best possible definition that suits their purposes. Mr. Nakamura suggested that they could also look at some of the other Counties that have districting, Honolulu, the Big Island. Mr. Shiramizu is wondering if Elections here might have some information as well. Mr. Belles said they will leave it to his resources and his wear with all to best advise them. Mr. Shiramizu noted that he doesn't see how they with Mr. Belles and Mr. Nakamura, could go astray, they don't need him. Mr. Belles said that they've already misled the Commission on numerous occasions, so they need him, at least he has. Mr. Abrams said that they're so lost that it doesn't matter if they have one more attorney. Mr. Belles just wants to make sure that they have objective legal advice and not by someone that has a voting interest in this.</p> <p>Mr. Abrams went on to the second one, number 10, shall all County public records be published on the County website. One of the things they were concerned about is there may be some things that would be specifically prohibited from that and whether or not, what would they define public records as. Mr. Shiramizu did a little bit of checking on that and he doesn't know what the law is, the common name of this law is, 92F, but what he did find is that there is a section 92F-14 which basically says that disclosure of government records shall not constitute a truly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual. And then they set forth a number of examples of information in which they believe it to be a significantly privacy interest for an individual. He said there is in fact a constitutional right to privacy under the State Constitution but he thinks if there is a compelling State interest, they can override that Constitutional right. Mr. Belles wants to be sure that if by them publishing everything they don't buy into defamation laws, which is invasion of privacy and everything, and by the same token he would hate to have an</p>	

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	<p>unreasonable amount of resources put into reviewing every single document and making a legal determination of which should be a public record or not. Mr. Abrams is also thinking if they go so far as to put it on the ballot they would also clarify just exactly what records would be available. Mr. Belles said would broadly say as provided by law, they need to know themselves what those limitations are to make sure that they really want to go there. Mr. Shiramizu gave them one example of what they list there, social security numbers, information relating to medical, psychiatric or psychological history diagnosis, treatment, or evaluation, but there are 9 items listed. Ms. Robeson would like to add to that, she would be interested in knowing what the current policy of the County is for what they put on a website now. She asked if they have a written policy or is it just by request or arbitrary. Mr. Abrams said that it's done by Department, for instance the Planning Department has chosen to just put on some resources but mainly just the agenda, they don't put the minutes on, he believes the County Attorney's office absolutely has nothing on it other than they're the County Attorney's office, he thinks they left the Charter there as one of the things, but each Department he thinks from what he can tell is, because it's sort of new, that there really hasn't been a policy. Ms. Robeson would just like to confirm that there's no policy then at the upper levels, a County policy, not a Departmental policy. The Finance Director will be asked as the IT Department is under him.</p> <p>Mr. Abrams moved on to number 11, one of the things he had, they had asked Mr. Stoessel assist them in bringing all of these items together, he has completed his work and he will sit down with Mr. Shiramizu and he has gone so far as to put in all of the items that they have been talking about along with the additional 3 that he had mentioned relative to the Salary Commission that were needed. He will turn that over to him and he can take a look at that and he will have that distributed to the Commission, but he's done his work so perhaps, unless they are looking for any other legal things relative to the Salary Commission, he asked if anyone had any concerns in regards to that, it's just really more the make up and how you go about doing it. Mr. Shiramizu noted it was more housekeeping kind of changes. Mr. Abrams said that Mr. Stoessel has suggested that they completely replace the current Article XXIX.</p> <p>Mr. Abrams went down to number 28, the limits on the subjects of initiative and referendum, shall they be repealed. Mr. Belles said that was explained today by Mr. Lewis, part of his testimony so they want to see if there were any legal constraints on the subject matter, for example, what's currently pending before the Hawai'i Supreme Court with the appeal from the Fifth Circuit Court decision on the tax issue. Mr. Shiramizu asked if they wanted an update. Mr. Belles added and if there are any other issues they should be sensitive to that might also be included as limitations on initiative and referendum. Mr. Abrams asked if there would be any State limitations. Mr. Shiramizu thinks it would be helpful and he doesn't know whether it's available, but when the Charter was first adopted, going through some of the minutes and seeing why those particular areas were called out of the referendum and initiative section. Mr. Belles said that's only going to show them the state of mind, pre-'69 and laws have changed since that time so they don't know if it's been expanded or restrained in terms of what those areas are based on development of common law and other jurisdictions. Mr. Abrams asked what are the restrictions right now at this point. Mr. Shiramizu said they are mostly general terms, financial and contractual. Mr. Abrams read "not extend to the operating budget, capital budget, financial authorizing repealing any levy of taxes, any emergency legislation, salaries, appropriations of money, appointment of employees, issuances of bonds and collective bargaining contracts," those are all, are limited to</p>	

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	<p>what they can do. Mr. Belles said he was with the County Attorney at the time this was crafted and he did talk to the author, Mr. Morris Shinsato, so he does know his intent at the time, which was ultimately ratified by the County Council and put on the ballot, which the people ultimately adopted was to not to interfere with the County's ability to enter into binding agreements, you don't want to overturn that, there's certain constitutional issues that come into play on that, and also they felt that in order for government to do business, there had to be a certain ability to raise revenues, come up with a balanced budget without interference by the people. But again, times have changed, things are different, this proposition 13 would be appropriate to revisit some of those issues, but that was the mindset at that time by the author as well as by the people who deliberated on the issue of the day. Mr. Abrams asked if it was saying that it was a Council reso then that was. Mr. Belles said that it was an issue that was publicly debated. Mr. Abrams said that in '76 the only vote was shall the Charter be amended to give the voters the power of initiative and referendum, so actually that notation on amended 1976 was actually more, doesn't apply to limitations, he's looking for the limitations, what he was thinking was the best source of records that they found was the County Clerk's office and he noticed that around resolutions they probably have a journal there where you could get an idea of what issues had come up at that time, although he's concerned also about what happened after that time, as to whether or not they can do that, that might be a good place to go look.</p> <p>Mr. Abrams went on to number 33, any sanctions issued by the Board of Ethics for a violation of the Charter must be determined by a court after consideration of the evidence in accordance with the proceedings applicable to criminal trials. Mr. Shiramizu said that someone needs to explain that to him in terms of what the proposal really is. Mr. Abrams said perhaps if he goes back to the author and ask them to opine a little bit more on that, that they can get something, otherwise they will. Mr. Shiramizu said that what it seems to say is that sanctions would be issued by the Board of Ethics and then those sanctions must be determined by a court.</p> <p>Mr. Belles said when they had a discussion at the last meeting, he made the general comment that typically this Commission or the Charter cannot convey jurisdiction on the court of law, there are separate means of doing that and that typically on appeals of any administrative agency of Chapter 91.14 which provides for appeals to the Fifth Circuit Court. Mr. Shiramizu said that is the administrative procedures act. Mr. Belles said that he had personal reservations about that, but that was the classic case where he didn't want to mislead the other members of the Commission based on his interpretation of that the law was, he wanted to get it from an independent source like Mr. Shiramizu to advise them on whether or not they have that authority and what limitations if any there might be on that. Mr. Shiramizu agrees with Mr. Belles, but he will check on it. Mr. Belles said that was the reason why this remained on there, they wanted to pose the question. Mr. Abrams said that Mr. Lewis on April 16 wrote a memo on it which he thinks would help clarify that and he would be happy to give Mr. Shiramizu what he has there, but he thinks it had to do mainly with the fact that there is a different standard for criminal, as opposed to whatever it is, that there are some procedural things that he was concerned about, but he will give him this. Mr. Shiramizu asked on 33, so that he is clear, what is he trying to confirm. Mr. Abrams said that this is saying that the Board of Ethics needs to, if it is going to do anything, send it to court for their determination. Mr. Belles said that he had serious reservations about even going here but some people (inaudible) questions about their legal ability to do it so that's where they wanted to an independent opinion on that from him. Ms. Robeson asked if he means in terms of the Board of Ethics being able to do that. Mr. Belles said correct, 1) he doesn't know that the Board of Ethics can confer jurisdiction on a</p>	

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	<p>court of law and that they can make it apply a criminal standard to their proceedings basically, because then you change the whole make up of the Commission, you really change the way they do business. Ms. Robeson said it's really an interpretation of the scope of the authority of the Board of Ethics. Mr. Belles said typically for the prosecution of a criminal case it's to be referred under State law to the County Prosecutor and in some cases to the State Attorney General, he doesn't know that they can confer that kind of jurisdiction on a Board or Commission and that's where he had reservations personally, but he would appreciate a second opinion and Mr. Nakamura wasn't there at the time. Mr. Shiramizu noted that Mr. Nakamura was previously a Public Defender and he might have some insight into this. Mr. Nakamura said he will think about that and will work with Mr. Shiramizu and come up with an appropriate response.</p> <p>Mr. Abrams moved on to number 40, employees and officers of the State and County shall not be eligible to serve on any Boards or Commissions. Mr. Belles said that the comment was whether or not they were preempted by State Law from considering that issue. Ms. Robeson asked if they were exceeding their authority to even propose something like this. Mr. Shiramizu asked that Article XXIII, Section 23.02 I. is the Charter of Kaua'i reference. The Commissioners said yes. Mr. Abrams noted that Article XXVIII Cost Control does specifically exclude employees of the County. Ms. Robeson noted that Section 23.02 I. says employees and officers of the State or County may be eligible to serve on Boards and Commission provided that such service does not result in a conflict of interest or is expressly prohibited by law. Mr. Abrams said that they're dangerously close to it right now on their own Commission. Mr. Belles asked where is the State statute that deals with this issue, again just to make sure there's enough preemption argument.</p> <p>Mr. Abrams went on to shall there be spending limits for the Kaua'i County Operating Budget, which is 21. Mr. Belles said that was intended to take into consideration the current appeal and does that inhibit them from not only that issue but perhaps any other issues that the court may have discussed. Mr. Abrams guesses that centers on the central argument as he understands it that the County is making on the 'Ohana case which has to do with Constitutional issues which were State Constitution issues he believes, so Mr. Shiramizu will need to take a look at that to see whether the spending side would be something that, he knows that Mr. Shiramizu had mentioned before spending, revenue, they all may be considered the same as that effect but he's not sure. They are looking for addressing this issue probably he would have to say in mid-June. Ms. Robeson said that the question is going to be is this going to be legal, that they could propose this amendment, if it passed would it be legal. Mr. Shiramizu asked the amendment would be just the TEL. Ms. Robeson said yes, that's the intent of this. Mr. Nakamura said he said on his mind was 1) are there legal limits, 2) if there are, what are they.</p> <p>Mr. Abrams moved on to number 26, shall there be a County Manager form of government. Mr. Belles said that there were both substantive and procedural issues, if they wanted to pursue this issue, how could they do it, for example could they create a Commission to study this and then to report back within a given period of time and have the measure appear on the ballot, is it something that could only be considered by Charter Review Commission, those types of questions they wanted to know how they can pursue this issue and then if there are any substantive limitations on County Manager form of government that are clear. Mr. Shiramizu doesn't think that there's any substantive limitations, it's more of a process, in all of the research that he has</p>	<p>Mr. Curtis Shiramizu will look at Proposal #21 regarding the spending side.</p>

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	<p>done, it's just a matter if you make that decision, how do you go about doing it, the transition, and then the technical part of making a proposed amendment to the Charter, basically they would have to re-write the whole Charter, he thinks. Mr. Belles said that's what they need to know because he thinks it's clear within the time remaining to their deadline to submit the propositions, they are not in a position, he doesn't think, to come up with a comprehensive proposal for City Manager form of government, so how can this issue continue as an issue of the day and it only be pursued by the Charter Commission, can it be considered by another Commission created specially by this Commission, that's what they need to know, in the context of process. Ms. Robeson suggested that he give them some sample scenarios if this concept was put before the voters, what would be the scenarios to actually doing the implementation part of it, it seems to her that it would have to be a two step thing in some form, but she doesn't really know. Mr. Abrams knows that one of the things that they were discussing is that if they voted that they wanted a County Manager then could they then have it implemented within 2 years by a Commission that is set up to work out the details. The other one was if they voted for County Manager, should this Commission then pose the question with all of the details 2 years from now and have them vote again on whether they want a County Manager with all of the details, and then the 3rd scenario was they voted for a County Manager now, they tell the Commission to work on it in 2 years and have the details of the County Manager's work to be voted on and if that is rejected, then the Commission has to go back and work on another form of County Manager to go back, but basically they had made the decision that they wanted a County Manager, so all of those 3 are sort of possibilities there that he thinks Mr. Shiramizu may want to take a look at. Mr. Shiramizu doesn't think that they are going to be able to put a ballot proposal together, and Mr. Nakamura continued that actually proposes a County Manager form of government, Mr. Shiramizu added that details all of the things that need to change in the Charter, that's basically what they said. Mr. Shiramizu said the other scenario would be to, and he thinks it's been done, similar things have been done in the past, creating a Commission to, but how would they know that they want to implement it. Mr. Nakamura said in his mind one of the, Louis has some ideas for possibilities and his sort of ideas for possibilities is to ask the voters would they be interested in creating a Commission whose charge it would be to look at this issue and there's a couple ways they can diverge from there, shall the Commission be given the discretion to place it on the ballot or just tell them that if the voters say yes, then the Commission is charged with creating a proposal to put on the ballot in 2 years. Mr. Belles said or it could be more broadly stated, just report in 2 years what their recommendations are of the Commission, they don't know what they can do. Mr. Nakamura added whether or not it's even appropriate or legal. Mr. Belles said can it be done opened ended too. Mr. de la Peña said then they don't have to worry about what comes next, just ask the voters first if they want it or not. Mr. Belles said they are not giving them anything tangible by just saying City Manager form of government, there are many forms of City Manager forms of government, so there could be a question that the proposition itself is deficient just because it's not specific enough. Ms. Robeson said that was her question. Mr. Takenouchi said he thinks they need to know how other (<i>inaudible</i>) are formed, what is the best process to present to the voters to vote yes or no and how do they proceed from there. Mr. Abrams said that they have got them back to thinking they couldn't possibly change the Charter and he's wondering, it directs to the Mayor, the Council, they'd have to address Commissions. Mr. Shiramizu said that any Commission that would be, assuming that would be something could be done legally, would be charged with doing all that work – putting an actual proposal together assuming that's what they want to do. Mr. Abrams said that in his discussions with members of the public he recognizes that they may have to change the way Commissions are their countervailing force,</p>	<p>Mr. Shiramizu to look at the 3 different possibilities of County Manager.</p>

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	<p>to allow a County Manager to have more supervision over these departments than what we have with the strong Mayor system and that when mentioned to them that they may have to do away with the Commissions from the sole authority to just advisory, which from what he can tell even most County Manager don't want advisory, they basically want the ability to run these departments like a business and that the advisory part is going to the Council and their direction of them, there are so many different forms and they were a little bit taken aback of losing the Commissions because they are used to that.</p> <p>Mr. Abrams moved on to number 32, the duties of the Council and the Mayor should be stated. Mr. Belles said that they have varying points of view on that, some are that it's sufficiently stated in the Charter today, what really are they looking for above and beyond what's already in there if it isn't already covered by a specific Charter amendment. Mr. Abrams said that they might want Mr. Shiramizu to take a look at all of them because if he remembers correctly some have duties and some do not. Mr. Abrams said that if he remembers correctly, the Mayor has powers but no duties. Ms. Robeson said that the title is listed as duties, powers, and something but then it doesn't list any duties, some things like that, some kind of inconsistencies. Mr. Abrams asked if there are duties, he sees County Attorney, you can pretty much all the way down. Mr. Belles said that could be a definition of terms, what do you mean by duties. Mr. Shiramizu asked what is the question, do they want to put the duties into the Charter. Mr. Belles said this is policy. Mr. Shiramizu said you should as a body, he doesn't know that. Ms. Robeson said the comment from the public was the powers were listed but the duties aren't. Mr. Takenouchi added so how do you hold them accountable, that was the question. Ms. Robeson said a review of the Council and the Mayor or the executive branch section to see whether, 1) you feel that the duties are there or is it semantics or maybe it's just interpretation of the words or something. Mr. Belles thinks a lot of the people talked about what's the remedy, how do we punish an offending official, there was a lot of talk about that, they may want to extend duties, responsibilities, powers to the consequences part also. Mr. Abrams suggested that if he would put together what some of the powers and duties, he'll take a look at the other Counties and see if they have anything in their Charters, maybe some selected mainland ones they can discuss that and then at that point they can get back to Special Counsel to see if they need anything. Mr. Shiramizu said the other thing is on the enforcement side, wasn't that really the motivation. Mr. Belles said that's an issue for a lot of people, an example is where Commissions that haven't been filled, people that haven't done a job that's actually required in the Charter, what then is the redress. Mr. Shiramizu said that looking at the Charter there obviously isn't any kind of sanction. Mr. Belles said that there is a provision for violation of the Charter under General Provisions. Mr. de la Peña asked who enforces it. Mr. Abrams said that they are going to have to look at that too, there's no point doing this if they don't know who is going to be enforcing it. Mr. Nakamura noted that it is implicit in the Charter that everybody has a responsibility. Mr. Belles said that you have to do your job, but what are the consequences for not, because if you direct all of your attention to 23.10 on page 32, penalties, general provisions and it reads as follows: Any violation of a Charter provision, any Ordinance or duly enacted rule or regulation having the effect of law shall be subject to a fine not exceeding \$1,000 or one year's imprisonment or both unless the Charter, Ordinance, rule or regulation provides for a specific penalty in which case the specific penalty shall control. Prosecution for any violation shall be provided by law for the prosecution of misdemeanors. Mr. Belles said that they do have a section in there right now. Ms. Robeson asked who would do that. Mr. Nakamura said that it's a criminal offense so that's the County Prosecutor, that's clear. Mr. Abrams said that's only criminal though, like for instance what if</p>	<p>Mr. Shiramizu to look at Proposal #32, the duties of the Council and the Mayor.</p>

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	<p>they don't appoint the Cost Commission within the time limits that they're supposed to. Mr. Belles said that again, that goes to what kind of remedy they want. Mr. Abrams said he doesn't know, he doesn't know whether it would rise to a throw him out of office type of thing, but reality is that where are those checks and balances, is sort of what they would be looking for. Mr. Belles said then there's the other section of the Charter, misfeasance, malfeasance, and nonfeasance, what does that mean, what's the remedy there, they have to look at those and see, do they have sufficient remedies in there that are just not available or are there really other creative ways of <i>(inaudible)</i>. Mr. Shiramizu thinks a mandamus action, where a government official is forced. Mr. Belles said that requires someone to go to court, what they are looking for, ultimately maybe it can be appealed to court but they want to see if there's a mechanism available, under the Charter, short of litigation. Mr. Nakamura is not suggesting that they do this, but say for example there's just 1 or 2 people on a Board or Commission. As a consequence of the Mayor's and Council's not appointing others, they could have whoever is on the Board or Commission just sort of go through appointing additional members themselves. Mr. Belles said like a default provision. Mr. Nakamura said right, sort of the idea being providing some kind of motivation short of having someone file suit. Mr. Belles said then you're going to have to go through a lot of things and talk about duties, responsibilities of all officials and if they fail here, this a remedy, if they fail there that's different remedy. Mr. Takenouchi said that is providing that they already have some members that are appointed, if they don't have any members appointed, then they are stuck. Mr. Belles said that the question was are there consequences for the decision makers that are supposed to be making the decisions. Mr. Nakamura said that it was a broader question, it wasn't just, but it kind of had it's seat in the Salary and Cost Commission. Ms. Robeson thinks what's missing is that someone reading the Charter, mainly the public doesn't know what steps they can take to remedy a public official that violated a part of the Charter, beyond what's in there, they wouldn't know the next step to take. She continued that a question for her is at what level is the Charter, is it like law, or is it. Mr. Shiramizu said it's law. Ms. Robeson said that if it's law, then there are legal steps that have to be taken, that's to her from a public perspective, what's not clear how someone from the public would enforce it. Mr. de la Peña asked if somebody in the public sue the Mayor, a Councilman who failed to execute his or her duties. Mr. Belles said that's the statement that Mr. Shiramizu made, a mandamus action isn't only an action available to a government official, it's available to the general public, you have what you call the principle of private attorney generals, people who advocate any kind of an issue before a court of law if they feel that the government hasn't done what they are supposed to do, it's not just the action of mandamus or other similar extraordinary risks but those things may have changed, those are the types of things that he thinks people are looking for and maybe the remedies are already there and maybe they are already articulated in the Charter. <i>(tape 1 side B ends here)</i> <i>(tape 2 side A begins)</i> Mr. Shiramizu said appoint somebody and he's subject to a fine not exceeding \$1,000 and one year's imprisonment. Mr. Belles said arguably and anyone, let's put it that broadly without pointing fingers or any member of this Board or Commission that does anything that it shouldn't be doing or failed to do something it should be doing, so they take this seriously, it's not a frivolous thing. Mr. Abrams said that it's sort of sitting in the general section which tells him when the Charter was done they kind of thought about it after, because if he remembers seeing other Charters they have a specific section for violations of the Charter and then they go down the line as to whether you're an officer or Mayor and they actually include it in one Article. Mr. Abrams continued that in 1980 the question that was asked of the voters which was done by Council resolution says</p>	

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	<p>shall there be an addition to the penalty provision in the Charter providing for penalties to be set by rule or ordinance, so they may have some of those already being addressed right now. Mr. Belles said that there is an acknowledgement in most of our Ordinances, we do have provisions that if you violate an Ordinance, for example if there's a violation of the CZO, you have the ability to have the County Attorney enact civil action and then the Prosecuting Attorney to pursue criminal violations as well and other Ordinances have similar penalty provisions. Mr. Abrams asked if they weren't in there before 1980. Mr. Belles said they were. Ms. Robeson said that if it's an Ordinance you have to go through that kind of chain up the ladder, you have to go, like if it's a Planning violation. Mr. Belles said that there's always complaints about enforcement, personnel and those types of issues too. Ms. Robeson said with the Charter you go directly to court basically, she guesses. Mr. Belles said not always because again you have impeachment, you have recall, a bunch of other things that are short of a criminal prosecution but there's still redress available to the public and to citizenry to make sure the government officials do what they are supposed to. Mr. Nakamura asked if the idea that by more clearly stating the duties that would make them subject to consequence. Ms. Robeson thinks they got sidetracked on something different. Mr. Abrams said it kind of went that way but that was linked, that's the way the public wanted to know the answer, why are there no duties, they've got powers and where would I go to if someone failed those duties. Ms. Robeson said it's sort of 2 things then, the duties that are listed and what does the public do if they violate the duties. Mr. Belles said what may be helpful is a matrix showing what penalties and enforcement provisions that are in the Charter today, whether it be impeachment, recall, Board of Ethics investigations, the one section they just read from, Section 23 and he thinks there are a couple other General Provisions in the Charter, they just have to review that and see, is it sufficient or do they have to be refined or amended or added. Mr. Nakamura noted that there are provisions in the Kauai County Code, under the Code of Ethics section which detail very specifically penalty provisions. Mr. Takenouchi asked if that is something that should be referenced here, like Ms. Robeson says, you know what the penalties are but they don't know how you go about it. Mr. Belles said it's part of the educational process where they are telling the community that may not be privy to the laws and the consequences that there are these separate mechanisms available to deal with violations, it's just that they are frequently not done. Ms. Robeson said that if they saw the Ordinance, they could decide whether they wanted to maybe put part of that in the Charter.</p> <p><i>Mr. Belles exited the meeting.</i></p>	
<p>7. Discussion of Charter Commission's Budgetary Needs for County Fiscal Year 2006-2007 & Review of Budget and Status of Expenditures for Fiscal 2005-2006</p>	<p>a. Discussion of the Mayor's Administrative Assistant, Gary Heu's, written response to the deletion from the Charter Commission's budget of funds for Public Education use on Charter amendments. Action plan to approach the Council for restoration of the funds.</p> <p>Mr. Abrams said that at their last meeting they had a discussion with Gary Heu and he proposed some changes and Mr. Abrams circulated that for the Commission's information, Mr. Heu's response which was he replied, "I appreciate the discussion with the Charter Review Commission on Wednesday, hope you can understand the demands of my position in attempting to establish fiscal balance, I've attached for your review the supplemental budget request that we will be submitting to the County Council. Your \$50,000 request of public information has been left intact. You may need to make your case with the Council". Mr. Abrams apologizes to Gary because he interpreted that they didn't get what they wanted especially when it came to public education which was their biggest concern and he wanted to let the public know that the amount that</p>	

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	<p>they had requested has been re-established in the budget, however they have their Special Counsel that has been reduced to \$5,000 and he thinks they just gave him \$10,000 worth of work, so he asked Mr. Shiramizu if he had any suggestions or do they need to go to bat. They basically have been told that they can address his needs out of the County Attorney's budget. Mr. Shiramizu said that's what he understands as well. Mr. Abrams said what that would mean he guesses, they were asking \$50,000 to finish off and he doesn't quite understand the procedure that they would go through. Mr. Shiramizu asked if the \$5,000 is just a carryover from July, the rest of the fiscal year. Mr. Nakamura said from July 1, he thinks, it's for next fiscal year's budget. Mr. Abrams said that they have substantially more than \$5,000 to go through the rest of this fiscal year so he's just not sure relative to that, and he would need to obviously make sure that Mr. Shiramizu is comfortable with it because they are probably going to be requesting a lot of work from him. Ms. Robeson asked if in the budget that they had for fiscal 2005-2006, they had \$30,000 allotted and the procedure was in terms of the payment part is that Mr. Shiramizu would submit to the County Attorney's office and then they would check with the Chair to see whether those expenditures were accurate and if the Chair would approve and then go back and Mr. Shiramizu would get paid. So under the new proposed 2006-2007 fiscal, after the \$5,000 is gone, she asked if it's still going to be the same procedure and her concern is Special Counsel losing his independence from them. Mr. Abrams asked if Mr. Shiramizu's fiduciary duties switch if they came into a conflict. Ms. Robeson said he still has the same relationship with them that they ask him to, they request that he perform certain research and that relationship is still the same under. Mr. Shiramizu doesn't think that the attorney/client relationship is between the Charter Commission and himself and it doesn't matter who paid. Ms. Robeson said that was her concern. Mr. Shiramizu said his question is, is he going to get paid – he said he is just joking, he is not worried about it. Mr. Takenouchi asked Mr. Nakamura how does it work. Mr. Nakamura said the Special Counsel contract comes out of the County Attorney's office. Ms. Robeson said she thought it was in their budget for this year. Mr. Nakamura asked for the upcoming year. Ms. Robeson replied for 2005-2006, it's in the \$70,000 that they had. Mr. Takenouchi said in the 2006-2007 obviously they don't have enough funds and that the rest of the balance of the funds is going to be requested through the County Attorney's office. Mr. Nakamura said he's trying to understand, he asked what did Mr. Heu say with respect to their upcoming year's budget? Mr. Abrams said he should have the budget worksheet in there, which he had their '05-'06 budget and they had '06-'07 proposed, this is what they proposed and then when they saw the initial budget submittal by the Mayor it was pretty much the same as what the last fiscal year was and then this Mayor's office review is their work on how they're going to allocate it based on their line items, and then the comments there has to do with that, under Special Counsel it says County Attorney to cover additional support. Mr. Nakamura asked if this came from the Mayor's office. Mr. Abrams answered yes. Mr. Nakamura said just based on this memo it looks as though the Mayor's office is contemplating that additional funding come from the County Attorney's Special Counsel budget. Mr. Abrams thinks what happened was, when they first got started last year, there wasn't any thought given to a Special Counsel specifically for this, that's why they included it in their budget when they first got started. And now that they're so regular and visible, they had the opportunity, he is assuming, to plan in the County Attorney's budget, the fees that would normally be paid, that's the only rationale that he could think of at that point, and as such that's why they don't need to specify any more in their budget and that would make sense to him, he would just need to make sure that they have the arms length that is needed for a Commission like this to continue on and make sure that they don't run into any problems because they may have time deadlines and need to make sure that Special Counsel can be</p>	

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	<p>compensated. He doesn't have and maybe he can write to the County Attorney to confirm that this is in fact the case, he doesn't know whether she has had a chance to speak with Mr. Shiramizu about it. Mr. Shiramizu said that she did call him and talked about what he foresaw as his time, the time that he would be spending on the Commission business. As he recalls, and he spoke to Commissioner Nakamura about it also, but as he recalls, this was before he was aware that the Commission wanted him to attend and be at all of the meetings, but she did talk to him and what they did discuss seemed to make a lot of sense, she asked for his input on the time, and he gave her what he thought he would be spending. Mr. Nakamura said that prior to July 1 budget kicking in, any further encumbrances against Mr. Shiramizu's contract will have to come from this fiscal year's budget. Mr. Abrams said they have roughly \$14,000 left in \$30,000 Special Counsel budget, they have \$37,000 out of the \$70,000 of their total budget remaining, unencumbered. Ms. Robeson noted that Edie is tracking or trying to get information to track Ho'ike's because they are like their next biggest expense. Mr. Abrams said they might notice that they had increased that and they restored what they had, which was an increase from this fiscal year and that was mainly because he had anticipated weekly meetings. Mr. Nakamura said in all fairness to the County Attorney, he thinks she talked to him about this but he cannot remember, so he will go back and talk to her, because he thinks most of the work would be completed by around July 1, hopefully, August 1, so the biggest chunk would be July.</p> <p>Mr. Abrams said there was one other thing that he knows they were still discussing that had to do with the pros and cons and the role of the County Clerk in developing these things before they go onto the ballot, and it was mentioned that there was a State law that directs them on that and he asked if Special Counsel could find that out because he was thinking that with the pros and cons and a number of other things, filling out the majority of the information to put enable whatever the Charter amendment is or some other things that he is going to need to be doing. Mr. Abrams was thinking that those were also going to take more than what he's looking at in terms of time. Mr. Nakamura noted that they can always go in for a supplemental budget request. Mr. Takenouchi said that was what Mr. Heu indicated. Mr. Abrams noted those take 4 months, so they would be done by the time, so they have to get it right the first time so Mr. Shiramizu can get paid. Ms. Robeson asked Mr. Shiramizu about getting paid and what was the date of his last invoice that he sent to the County and she asked has he been paid, she asked if it has been over 30 days. Mr. Shiramizu said no, he doesn't think so, he knows that they had problems with the \$15,000 but he recently signed an amendment to the contract that he believes took care of that. Mr. Abrams said she is following are there other rules for the Special Counsel that they have the fund for, they are simply part of that process. Mr. Nakamura thinks that the allotment made for \$30,000 but the first increment of Curtis' contract was only for \$15,000 and now there's second increment that's coming for the second \$15,000. Ms. Robeson's concern is that he gets paid in a timely way because he's providing them service and if he's not getting paid in a timely way, they really want to know about it. Mr. Abrams asked Mr. Nakamura to have the conversation and then he will speak with the County Attorney and then report back to the Commission. Mr. Shiramizu appreciates Ms. Robeson's concern.</p>	<p>Mr. Galen Nakamura will report back to the Charter Commission on the status of his contract fees with the County Attorney.</p>
<p>8. Schedule, Timeline & Tasks of the Charter Commission</p>	<p>a. Review of overall schedule, timeline & tasks of, and invitees to, the Charter Commission b. Further consideration and, if necessary, revision of schedule of Commission's meetings and invitees c. Discuss schedule for holding public meetings around island (i.e., set dates, reserve locations, legal notice) d. Discussion concerning the direction of work and questions to be decided by the Commission e. Status of special counsel's work assignments in support of the Charter Commission</p>	

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	<p>f. Additional Community Meeting Dates at Neighborhood Centers from July and September</p> <p>g. Additional Charter Commission Meeting Dates from May to July</p> <p>Mr. Abrams said they are full speed ahead. Ms. Robeson said they had a new calendar and asked if there was anything on that calendar that was any different from what they've had. Ms. Ignacio answered no, that is just updated as of May 8 and includes the note July, includes the community informational meetings and confirms that she has gotten everything set up, the ASL interpreter and sound. Mr. Nakamura said that he has an idea regarding the cutoff deadline, he asked if it would be possible to speak with the information technology people and ask them if they can put a big banner on the website so that people, more news is better.</p>	
9. Commission Efforts to Foster Public Participation	<p>a. Update on Commission's Internet web site</p> <p>Mr. Abrams doesn't have anything right now, but they are going to be heading out as they narrow these down in having people called to address various groups and many of them want to wait to see whether or not they get it filtered down a little bit more and he told them that he thought they would be substantially into that by June. Ms. Robeson said to look back at their calendar, their July 5th community meeting at Koloa, that would indicate to her that they would need to have everything nailed down by then. She apologized to Mr. Shiramizu, that's a lot of work for him too, to her, July 5th is not just the wording, it's some explanation underneath it because this is the kind of the last time before they actually submit this stuff to the Clerk's office, so they will have a public education series after that. Mr. Nakamura said that this would be their going out to the community explaining what they are trying to do. Ms. Robeson said they ought to be able to really explain it, not like last time, where it was kind of concepts.</p>	
10. Communication and Handouts	<p>a. April 27, 2006 Draft from Caren Diamond of the Overview of Concepts Voter Initiative regarding Permitting of Resorts and Other Tourist Accommodations</p> <p>b. April 28, 2006 e-mail from John A. Love concerning Expanded Charter Amendment Comments</p> <p>c. April 29, 2006 e-mail from Georgette A. Yaindl concerning About Your Agency's boards</p> <p>d. April 29, 2006 e-mail from Murray C. Hudson concerning Proposed County Manager Form of Government</p> <p>e. May 3, 2006 letter from Edwin H. Nakano concerning Proposed County Manager Form of Government</p> <p>f. May 5, 2006 e-mail from Richard Stauber concerning Charter Enforcement</p> <p>g. May 6, 2006 e-mail from Murray C. Hudson concerning Suggestion</p> <p>h. May 8, 2006 letter from Roy T. Nishida concerning Proposed Charter Amendment #11, Salary Commission</p> <p>It was moved by Mr. Takenouchi and seconded by Mr. Nakamura to accept the communications for the record by unanimous vote.</p>	
11. Public Comment on Charter Commission May 17, 2006 Meeting Agenda Items	<p>Richard Stauber, public witness, thanked the Commission for the opportunity to speak on the issue. He will go back to the budget, it comes clear the budget they proposed, \$145,000 which was the needs and it was cut back to \$88,000 which means the Commission is short \$50,000. If they need this monies he asked if they are going to lobby at the Council for it, that is monies coming, so it is up to the Commission which direction they want to go, get it over with, out from the County Attorney's office or are they going to go pull a money bill directly out of the Council. He said it's up to the Commission but he will support any ways to get these monies because they need it. The other part which he wants to talk about is he submitted the May 5th proposal but he</p>	

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	<p>wanted tickle little bit of their nose on the enforcement of the Charter which came up earlier today in the discussion phase and he bring on here the perfect example that the system fails us the people because it's simply not enforced. He has no idea, he made a proposal that they at least, if they the members of the public have to sue in court the officials that at least the members of the public get their cost reimbursed or reasonable attorney fees reimbursed. He has no intention to sue anybody, under this circumstances which we have right now, he is being punished twice, first the law is violated or the law which he is entitled to is violated and second he has to pay for it. The point where he is coming from is give him at least, if he has to sue, he'll have to go all through this trouble, then give him at least some reasonable attorney fees back, he doesn't ask for his money and all the hassle but at least give him some monies back. Mr. Abrams asked if he thinks going to, as Mr. Lewis suggested, to the Board of Ethics or does he think that would still require him for legal fees. Mr. Stauber said currently underneath that example which he brought forward, the Board of Ethics has no intention to pursue it either so he's stuck, he's stuck between every force which is supposed to do something and now it's up to him. From the point of view Walter Lewis is coming from, it would make sense to have somehow a procedure in place which says you have to go to this hoops, hoops, hoops, hoops, hoops, and then if this fails, you're on your own and then you have to do something and then we're going to reimburse you for the costs, it's not working and under the current circumstances it's somewhere the system broke down and members of the public are being stuck and punished twice, this is where we are. He just would say, he has no problem going through a procedure if this procedure is clear and he can follow on it and what he has to do if this procedure fails, should be in this procedure then in too. Mr. Abrams said that Mr. Stauber had mentioned in his May 5th letter there, he's suggesting using similar language, HRS 91-12 C. which is the one any person may commence a suit in the Circuit Court. Mr. Stauber said he is right, this is similar to the Sunshine Law, HRS 92-12. Ms. Robeson said regarding their budget, she thanks him for offering, she thinks in the original budget they had for fiscal '06-'07, \$70,000 the supplemental added \$19,000 and she understands yesterday \$7,000 more was added by the Council so that brings them up to \$96,000 which left them some short, that shortage was going to be covered by the Mayor's office, the common expenses, like office supplies and stuff like that so she thinks they are good. Mr. Stauber said that if any money would fail, he rather have it sitting at the Commission instead going afterwards hush hush money from here and hush hush money from there and there and there, it's very difficult because underneath our Charter the Mayor cannot just appropriate money from one Commission to their Commission without Council approval, he has to go to the Council to do this, it's in the Charter. Mr. Stauber continued that unfortunately the Mayor which is going to go and take from another Commission and appropriates to their Commission. Mr. Takenouchi said what they are going to do is they are going to seek the help, the interpretation from the County Attorney because the County Attorney has stated that they would support them with the Special Counsel which is why a great deal of why the shortage is. Mr. Abrams said that his question to the County Attorney will be can you say not to a request from the Commission, because if they do, then they are back to square one. Ms. Robeson said that the County Attorney's money was one thing but then there were some Mayor's office/Commission common expenses, such as office supplies and postage and that was going to come out of one account, so to her that's kind of minor. Mr. Stauber said this is not the big bucks. Ms. Robeson is just saying that she thinks they are going to have enough to do the business of the Commission, thanks to the Mayor's office and to the Council. Mr. Takenouchi said that they really appreciate Mr. Stauber's concern. Mr. Stauber said he doesn't want to see coming up to the same thing that happened to the Police Department, that shortly after the fiscal year closes</p>	

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	<p>this big screaming starts, the Commission run over budget and even if it's only a few dollars, it shouldn't happen, he rather have sitting there more than less. Mr. Abrams noticed that on their additional list that they are going to Sunshine for the next meeting, his suggestion is not on it. Ms. Robeson said this is 5/3 and his is 5/5. Mr. Abrams asked if they would find it then on some other, and if not, can he put it on. Ms. Robeson said it's in today's packet of communications and she's going to add those to the pink list.</p> <p>Glenn Mickens, public witness, thanked the Commission members for all of their hard work, from the public who appreciates it very much. He had 2 things, about the Cost Control Revenue Commission, as he previously stated, the intent of the Commission is excellent and he thought Jay's amendments sounded very good, he'd have to go through all of them, but as Barbara stated, what good is that Commission or any Commission without teeth. With the Safeway bridge, the mandate as stated to build to bridge is part of the permitting process was ignored for 26 years, in other words no enforcement process. And two, even more importantly this Commission is mandated by the Charter to be formed has never met, because he is skeptical of our government and he could be wrong, he has been before, he must wonder if lack of people or lack of will from the Administration is the cause of this powerful Commission not being formed. For example, at the latest Police Commission, one of its members stepped down and a new member was found and confirmed within 5 weeks, so you have to kind of wonder, well one they can't find anybody in 4 years and the other one they turn around and 5 weeks they find somebody. As Galen said, it's important to have an Ordinance, but again, even an Ordinance can be ignored, we need an enforcement process no matter what the law we make. In his opinion, this Commission, their biggest job is going to be which, if not all, items they will put on the ballot, it will be hard for them not to be a dictatorial Board and pick only the issues they want on the ballot, but he believes that limitations are a necessity as voters just aren't going to read. He said again, tough job, but how do you do it without being dictatorial, how do they go down this 50 some, and they going to be able to get more, how do they possibly pick it, are they going to put it on a. Mr. Abrams said for Mr. Mickens to not get them all worked up, they don't know either, they are just going to go as fast as they can and see where they finish up. Mr. Mickens said lastly, the County Manager, he asked will they be putting the pros and cons on the ballot of the measures, and if they do, won't this go to their next step, issuing another ballot to vote on, in other words, even with the 'Ohana Kauai amendment, they didn't put any pros and cons on the thing, Walter was very upset, they were all very upset that they didn't put the pros and cons to this thing. He asked if they are thinking about doing that, are they going to put the pros and cons when they put these whatever measures they put on the ballot, are they going to put the pros and cons, but again if they do like with this County Manager, now they are moving to kind of the next step, they were talking about doing something to find out what they're going to ask the people to vote on here. So again, he thinks that is kind of a difficult question, but he asked what Mr. Abrams thoughts were. Mr. Abrams said pros and cons he thinks are part of the Clerk's responsibility other than they can suggest and yes, he doesn't know whether or not pros and cons go right on the ballot or do they accompany. Mr. Nakamura said they accompany, it's informational material. Mr. Abrams believes pros and cons are very important and he's sure they are going to tend to want to get them out. Mr. Nakamura would concur with the Council Chair, he guesses the only caveat is that in the final analysis it's not necessarily, he doesn't believe that it's this Commission's final decision as to whether or not the pros and cons go on or not, it may rest under State law with the Chief Elections Officer of the County, the County Clerk. Ms. Robeson said but as part of their educational process after they submit the stuff to the County Clerk, they can have that as</p>	

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	part of their information that they share with the public. Mr. Nakamura said yes. Mr. Mickens said that is a good idea. Mr. Abrams said they are asking for it, they want it, they've mentioned it to them more than once, so they have to get it done. Mr. Mickens said that is true, unless they outline something to the public.	
RECESS	Mr. Abrams called the meeting into recess at 7:28 p.m.	
RECONVENE	Mr. Abrams called the meeting back to order at 7:32 p.m.	
12. Commission Efforts to Publicize the Charter Commission's Activities	<p>a. Radio Show</p> <p>b. Press Release(s)</p> <p>c. Newspaper</p> <p>d. Public Information at Libraries</p> <p>There was nothing to report on this agenda item.</p>	
13. Approval of Charter Commission Meeting Minutes	<p>a. April 12, 2006 Informational Meeting Minutes @ Hanapēpē Neighborhood Center</p> <p>b. April 19, 2006 Meeting Minutes</p> <p>c. April 24, 2006 Informational Meeting Minutes @ Kapaa Neighborhood Center</p> <p>d. May 3, 2006 Meeting Minutes</p> <p>Ms. Robeson said that the minutes is in general, it was discussed with Edie that maybe for their next meeting on Monday that they just do a summary of those minutes because they'll come out with an end product which is the pink page probably, because that's the topic of their meeting, so maybe they could just do a summary rather than having it a verbatim transcript. The other Commissioners agreed. Ms. Robeson said that she has the tape if there are any questions. Mr. Abrams said that she has the tape and you can actually get a transcript because it is being captioned and maybe for those that they do that and they have it on file too.</p>	<p>The April 12, 2006 Informational Meeting Minutes were approved.</p> <p>The April 19, 2006 Meeting Minutes were approved.</p> <p>The April 24, 2006 Informational Meeting Minutes and the May 3, 2006 Meeting minutes were deferred to the next meeting.</p>
14. Future Meetings of the Kaua'i County Charter Commission	<p>a. Possible agenda items for Charter Commission meeting of May 22, 2006, Council Chambers @ 4:30 p.m.</p> <p>Mr. Abrams said that Ms. Moriarty reminded him after reviewing the Kapaa minutes that the League of Women Voters had done a study on the Parks & Recreation if, if they remember them saying that and she thought that would be a good idea for them to track that down and have that available as resource info. Ms. Robeson noted that she has a copy. She will bring it to their next meeting and Mr. Abrams will scan it.</p>	
15. Adjournment	No other Agenda items were discussed. Meeting was adjourned at 7:35 pm.	

Submitted by: _____
 Edie Ignacio, Secretary

() Approved as is

Date: June 5, 2006

(X) Approved with amendments. See minutes of June 5, 2006 meeting.